

II. Unfair or Deceptive Trade Practices

While “unfair or deceptive acts or practices” has been expansively defined under N.C.G.S. § 75-1.1(a), we are aware of no reported cases yet which apply that law to payday lending. We have interpreted the Legislature’s request for evidence of unfair or deceptive trade practices to include violations of Article 22 of Chapter 53. Most of these violations were discovered during our examinations of properly licensed payday lenders. We have also included in this category, however, violations which were discovered during our investigations of unlicensed payday lenders.

Examiners from the Office of the Commissioner of Banks performed 713 examinations of all licensed Check Cashing Businesses during 1998, 1999, and 2000; they recorded 8,911 violations of N.C.G.S. § 53-281, broken out as follows:

Table II (A) N.C.G.S. § 53-281 Violations

	§ 53-281(a)		§ 53-281(b)		§ 53-281(c)		§ 53-281(d)		§ 53-281(e)		Total #	Total
	Total #	Impact	Total #	Impact	Total #	Impact	Total #	Impact	Total #	Impact		
1998	0	\$0.00	119	\$68,215.85	215	\$0.00	0	\$0.00	1851	\$228,102.23	2185	\$296,318.08
1999	18	\$0.00	475	\$15,135.54	1813	\$0.00	29	\$688.00	8	\$375.00	2343	\$16,198.54
2000	30	\$0.00	1968	\$237,639.59	2368	\$0.00	15	\$2.99	2	\$90.00	4383	\$237,732.58
Totals	48	\$0.00	2562	\$320,990.98	4396	\$0.00	44	\$690.99	1861	\$228,567.23	8911	\$550,249.20
Notes: 1) N.C.G.S. § 53-281(a) allows a deposit to be delayed for up to 31 days; § 53-281(b) limits the face amount of the delayed deposit check to \$300; § 53-281(c) states the requirements for the contract between borrower and payday lender; § 53-281(d) limits fees to 15% of the face amount of the check; § 53-281(e) prohibits roll-overs or extensions. 2) For this chart, “impact” means dollar violations: the difference between lawful fees and actual fees charged.												

We have also conducted 10 detailed investigations of unlicensed payday lenders. These investigations came about as a result of OCOB inquiries, consumer complaints, and complaints from licensees about unlicensed competitors. As might be expected, violations of law by unlicensed payday lenders were too numerous to capture in meaningful data. Of those 10 investigations of unlicensed payday lenders, five were resolved by signed consent orders. These five unlicensed lenders brought their operations into legal compliance, applied for a license, and commenced lawful business. Four matters are still pending; one ceased operations entirely. As of December 31, 2000, refunds to consumers from these unlicensed payday lenders had been paid in the amount of \$195,631.89.

Recommendations:

1. The Legislature should modify the language of existing N.C.G.S. § 53-281(d) from “face amount of the check” to “amount of credit extended.” This change will simplify interest calculations and end the collection of interest on the fee already paid for the loan.
2. The law should restrict the amount of credit extended to \$300. No lender shall accept transactions which, in the aggregate, exceed this limit. No lender may require a borrower to prepare more than one check per delayed deposit transaction.

III. Frequency of Repeat Use by Individuals